



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket No. USCG-2023-0053]

RIN 1625-AA11

### Removal of Regulated Navigation Areas Within District 5

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is updating District 5 regulations to remove two regulated navigation areas in Captain of the Port Zone (COTP) North Carolina within District 5 that are no longer needed. These areas were created to address the impacts of extreme shoaling in the Oregon Inlet, but subsequent Army Corps of Engineers dredging activities have alleviated the issue. The Coast Guard is removing these regulated navigation areas (RNAs) from the CFR to prevent confusion and to make the regulations easy to use.

**DATES:** This final rule is effective immediately upon publication.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0053 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** For information about this document call or email Petty Officer Ken Farah, Waterways Management Division, U.S. Coast Guard; telephone 910-772-2221, email [ncmarineevents@uscg.mil](mailto:ncmarineevents@uscg.mil).

### SUPPLEMENTARY INFORMATION:

#### I. Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port North Carolina
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
RNA	Regulated Navigation Area
§	Section
U.S.C.	United States Code

## **II. Background, Purpose, and Legal Basis**

This rule removes regulated navigation areas for regulations where the need no longer reflects current conditions in the waterways. If a change in circumstance indicates that additional safety measures are necessary, the Coast Guard might choose to promulgate new regulations to reflect that change. The changes to 33 CFR part 165 are authorized under the general authority of 46 U.S.C. 70034, which grants the Secretary of the Department of Homeland Security broad authority to issue, amend, or repeal regulations necessary to implement 46 U.S.C. chapter 700, Ports and Waterways Safety Program.

The Secretary has delegated rulemaking authority under 46 U.S.C. 70034 to the Commandant via Department of Homeland Security Delegation No. 00170.1. The Coast Guard is issuing this rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because it is unnecessary to do so. All of the changes in this final rule involve only minor amendments to existing regulations that will not result in a substantive effect on the public. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this final rule

effective upon publication in the Federal Register.

### **III. Discussion of the Rule**

This rule removes RNAs 33 CFR 165.520, Regulated Navigation Area; Herbert C. Bonner Bridge, Oregon Inlet, NC, and 33 CFR 165.T05–0466 Regulated navigation area; Oregon Inlet Channel, Marc Basnight Bridge, Dare County, NC.

*Regulated Navigation Area; Herbert C. Bonner Bridge, Oregon Inlet, NC*

This RNA was created on November 3, 2015 to prevent vessel strikes to the bridge when vessels were forced to use alternative spans, or atypical routes, to transit through the bridge, 80 FR 67638. Vessels were forced to use these alternative spans due to the presence of shoals. In the time since this RNA was established, a new channel has been dredged to support navigation through Oregon Inlet. This new channel created more room for navigation and the use of alternative spans is no longer necessary. Therefore, the Coast Guard is removing this RNA.

*Regulated navigation area; Oregon Inlet Channel, Marc Basnight Bridge, Dare County, NC*

This RNA was created on 8 July 2022 in order to protect the public from the safety hazard associated with the extreme shoaling in this area and shifting of the main navigational channel. As with the above RNA, the Army Corps of Engineers has since completed its dredging work and the navigational channel has been restored. As a result, the Coast Guard is removing this RNA.

### **IV. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes or Executive orders.

#### *A. Regulatory Planning and Review*

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

An additional Executive order was recently published to promote the goals of Executive Order 13563: Executive Order 13610 (Identifying and Reducing Regulatory Burdens). Executive Order 13610 aims to modernize the regulatory systems and to reduce unjustified regulatory burdens and costs on the public.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. A regulatory analysis (RA) follows.

*B. Small Entities*

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

*C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

*D. Collection of Information*

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

As required by 44 U.S.C. 3507(d), we will submit a copy of this rule to OMB for its review of the collection of information.

*E. Federalism*

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from

regulation by the States. *See* the Supreme Court’s decision in *United States v. Locke* and *Intertanko v. Locke*, 529 U.S. 89, 120 S.Ct. 1135 (2000). This rule disestablished a prior RNA on a navigable waterway of the United States of America. Therefore, because the States may not regulate within these categories, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

*F. Unfunded Mandates*

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*G. Taking of Private Property*

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

*H. Civil Justice Reform*

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

*I. Protection of Children*

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

*J. Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*K. Energy Effects*

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*L. Technical Standards and Incorporation by Reference*

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*M. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev. 1, associated implementing instructions, and Environmental

Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. This rule is categorically excluded under paragraph L60(b) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev 1. Paragraph L60(b) pertains to Regulations for Regulated Navigation Areas and security or safety zones: specifically, the disestablishment or reduction in the size of these areas or zones.

This rule removes two RNAs from the CFR as they are no longer applicable to the current conditions of the waterway.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

**§ 165.520 [Removed]**

2. Remove § 165.520.

**§ 165.T05–0466 [Removed]**

3. Remove § 165.T05–0466.

Dated: January 26, 2023.

Shannon Gilreath,  
Rear Admiral, U.S. Coast Guard,  
Commander, Fifth Coast Guard District.